IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.567 OF 2005
IN
CHAMBER SUMMONS NO.1658 OF 2004
IN
SUIT NO.2629 OF 2001

Prataprao Salunkhe .. Appellant.

V/s.

M/s.Nanabhoy Jeejeebhoy Pvt. Ltd. & Others .. Respondents.

Mr.M.M. Vashi with Ms.Varsha Palav for the appellant.

Mr.Omprakash Shukla for respondent No.1.

Mr.J.S. Suryavanshi for respondent No.3.

CORAM : R.M. LODHA &
J.P. DEVADHAR, JJ.

DATED : 19TH JULY, 2005.

P.C. :

Heard Mr.M.M. Vashi, the learned counsel for the appellant and perused the order dated June 13, 2005.

2. The respondent Nos.1 and 2 herein are the plaintiffs. The appellant is the defendant. The plaintiffs in their suit prayed for possession of the suit property admeasuring 41,285.85 square metres shown by capital letter ‘A’ and in brown colour on the plan at Exhibit ‘A’ from the defendant.

According to the plaintiffs, the defendant is a rank trespasser on the subject land and has illegally encroached upon the subject property and constructed unauthorised structure thereon.

3. The present respondent No.3 made an application for its impleadment as defendant in the suit. Though the plaintiffs did not object to the application, the defendant did.

4. The learned trial Judge vide his order dated June 13, 2005 permitted the present respondent No.3 to be added as defendant No.2. Hence, the appeal by the defendant.

5. Having heard the learned counsel for the appellant, we are of the view that the appeal does not deserve to be admitted. By impleading the present respondent No.3 as defendant No.2, no lis is created between the original defendant (appellant herein) and the newly impleaded defendant (respondent No.3). The original defendant shall be at liberty to contest the suit on all available defences and impleadment of respondent No.3 as party-defendant cannot and shall not affect his defence/s in contesting the suit. Not only that the plaintiffs did not object to the impleadment of the respondent

No.3 as party-defendant in the suit but also the learned Chamber Judge was of the view that the presence of the applicant (present respondent No.3) shall enable the Court in deciding the dispute finally and effectually. We find no fault in the approach of the learned Chamber Judge.

4. The appeal is dismissed in limine.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)